

Dunn

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-221529

DATE: July 1, 1986

MATTER OF: Bonnie L. Ilhardt - Real Estate Expenses -
Loan Origination Fee

DIGEST:

A transferred employee purchased a new residence and was charged 1.5 percent of her loan as a "commitment fee" at the time the loan was approved and an additional 1 percent of the loan at the time of settlement as an "origination fee." Agency denied reimbursement for both fees on basis of Settlement Statement characterization of both fees as "points." We look to nature of fee to determine if it can be allowed, and since the local office of the Department of Housing and Urban Development states that a 1 percent loan origination fee is customary for a conventional mortgage in the locality, the 1 percent loan origination fee may be reimbursed.

Mr. W. D. Moorman, an authorized certifying officer for the United States Department of Agriculture (Agriculture), has requested our decision on Ms. Bonnie L. Ilhardt's claim for the full amount of a 2.5 percent loan origination fee she incurred when purchasing a residence at her new duty station. For the reasons stated below, we find that 1 percent of the fee does represent a loan origination fee and Ms. Ilhardt may be reimbursed for that amount.

BACKGROUND

Effective July 22, 1985, Ms. Ilhardt was transferred from Park Falls, Wisconsin, to Milwaukee, Wisconsin. She financed the purchase of a new residence in the Milwaukee area by obtaining a conventional mortgage, and incurred a 2.5 percent loan origination fee in the amount of \$1,760.

The agency (Agriculture) disallowed the entire amount of the loan origination fee on the basis that the settlement statement prepared by the lending institution characterized the fee as "commitment fee 1.5% points" and "origination fee 1% balance of points." In disallowing the

035891

fee the agency additionally relied upon a letter dated September 16, 1985, provided by the lending institution which stated that "the commitment fee of 1.5% points paid by the Ilhardts in advance was part of the entire origination fee totaling 2.5% points." Additionally, the agency received advice from the Milwaukee office of the Department of Housing and Urban Development (HUD) that local lending institutions customarily charge a 1 percent fee.

Ms. Ilhardt reclaimed reimbursement for the disallowed 2.5 percent fee, contending that the total fee constituted the loan origination fee and that the total amount of 2.5 percent was customary at the time she obtained her mortgage. Further, she contends that the word "points" as used on the settlement statement is included as a synonym for percentage and does not indicate that the fee is a loan discount which would not be reimbursable. Additionally, the lending institution provided a letter dated December 4, 1985, which stated that loan origination fees in the Milwaukee area range from 2 1/2 to 5 percent and that the Ilhardts were charged 2.5 percent for their loan's origination. Further, Ms. Ilhardt has provided a newspaper survey of "loan fees" charged by lenders in conjunction with fixed-rate loans in the Milwaukee area which suggest a range of 1-3 3/4 percent plus fixed fees of \$200-\$800.

Against this background, Agriculture questions whether it may allow Ms. Ilhardt's claim for the full 2.5 percent loan origination fee.

DISCUSSION

Under 5 U.S.C. § 5724a(a)(4) (1982), an employee may be reimbursed for the expenses he or she incurs in selling and purchasing a residence pursuant to a permanent change of station. Effective October 1, 1982, the implementing regulations in paragraph 2-6.2d(1) of the Federal Travel Regulations, FPMR 101-7 (Supp. 4, August 23, 1982) (FTR) incorp. by ref., 41 C.F.R. § 101-7.003 (1983), were amended to permit reimbursement for loan origination fees and similar charges which are not specifically disallowed by FTR para. 2-6.2d(2). See Robert E. Kigerl, 62 Comp. Gen. 534 (1983). The term "loan origination fee," as used in FTR para. 2-6.2d(1), refers to a lender's fee for administrative expenses, including costs of originating the loan, processing documents, and related work. See Veterans Administration, 62 Comp. Gen. 456 (1983). Reimbursement

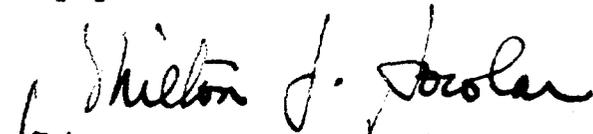
B-221529

for a loan origination fee is limited to the amount customarily charged in the locality of the employee's new residence. See 5 U.S.C. § 5724a(a)(4), as implemented by FTR para. 2-6.2d(1). See generally Mary C. Saucedo, B-219545, January 15, 1986.

In Gary A. Clark, B-213740, February 15, 1984, we held that an agency may rely on technical assistance provided by the local office of HUD in determining the customary loan origination fee for a given locality. We stated that the information supplied by HUD creates a rebuttable presumption as to the prevailing loan origination fee charged in the area, and is controlling in the absence of evidence overcoming that presumption. Applying evidentiary standards developed in the context of real estate brokers' commissions, we suggested that an employee may be able to demonstrate through a survey of local lending institutions that the prevailing loan origination fee is higher than that quoted by HUD. However, addressing the facts in Clark, we found that it is not sufficient for an employee to submit the concerned lending institution's statement that its loan origination fee represents the prevailing rate.

In this case, HUD's advice that a 1 percent loan origination fee is customary in Milwaukee creates a rebuttable presumption as to the prevailing rate in that area. Although Ms. Ilhardt's lending institution has submitted a letter stating that its loan origination of 2.5 percent was at the low end of the range of 2.5 to 5 percent in the Milwaukee metropolitan area, this evidence is not sufficient to demonstrate that lenders in the Milwaukee area typically charged a 2.5 percent fee. See Clark, above, and Richard P. Johnson, B-218754, September 17, 1985.

Under the circumstances, Ms. Ilhardt has not rebutted the presumption that only a 1 percent loan origination fee was customary in the Milwaukee area, and she may not be reimbursed for a higher amount. Therefore, a 1 percent fee (\$704) may be certified for payment to her for her loan origination fee.


for Comptroller General
of the United States